IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

COCP No.1217 of 2004
Date of decision: October 09, 2006.

Ashok Kumar

...**Petitioner(s)**

v.

Surinder Singh & Ors.

...**Respondent(s)**

Present: Shri PPS Duggal, Advocate for the petitioner.

Shri Gaurav Bhaiyya, Advocate for respondent No.1 & 4.

Shri H.C. Arora, Advocate for respondent No.2.

Shri G.S. Cheema, Sr. Dy. Advocate General, Punjab.

Surya Kant, J. (Oral)

Alleging that the son of the petitioner was not only framed up in a totally false and fabricated case but was also handcuffed and beaten mercilessly while he was in police custody and, thus, the respondent – police officials having acted in derogation of the directions issued by the Apex Court in the case of **D.K. Basu v. State of West Bengal**, RCR 1997 (1) 373 have committed contempt of court, that this contempt petition has been filed.

[2]. A brief resume of the facts is necessary. The petitioner's son, namely, Mohit Kumar was married to Jasbir Kaur @ Goldy, d/o Kanwaljit Kaur wife of Baldev Singh, on July 3, 2002. The said Jasbir Kaur @ Goldy and son of ASI Surinder Singh (respondent No.1), namely, Paramjit Singh

@ Pamma had studied together and had an alleged love affair. Jasbir Kaur @ Goldy, even after her marriage with Mohit Kumar son of the petitioner, continued her relationship with Paramjit Singh @ Pamma. As per the allegations of the petitioner, Jasbir Kaur @ Goldy frequently used to talk to Paramjit Singh @ Pamma on telephone and the petitioner's son Mohit Kumar caught her red-handed in a compromising position with Paramjit Singh @ Pamma in the petitioner's own house. As the said incident led to some altercation between the petitioner's son on one hand and his wife as well as Paramjit Singh @ Pamma on the other hand, she (Jasbir Kaur @ Goldy) left her matrimonial home with a warning to her husband to teach him a lesson. Paramjit Singh @ Pamma (son of respondent No.1) along with 4-5 other persons is stated to have entered the house of the petitioner by breaking open the door and gave beatings to the petitioner's wife Shamma Rani as well as their son Mohit Kumar. The said occurrence led to the registration of FIR No.26 dated 18.1.2003 under section 323/427/452/506/148/149 IPC in the Police Station City Abohar. ASI Surinder Singh made a representation to the police authorities that his son and some other family members were falsely implicated in the above said criminal case. An inquiry was then got conducted by an officer of the rank of Dy.S.P. who recommended cancellation of the FIR. Having come to know that fact, the petitioner also represented for an inquiry through some senior police officer. It appears from the record that Additional Director General of Police, Internal Vigilance Cell (IVC) got conducted an inquiry and found that the aforesaid FIR was registered genuinely. The challan was accordingly presented and the case is pending trial.

[3]. According to the petitioner, ASI Surinder Singh used all sorts

of pressure tactics for a compromise and withdrawal of the above said criminal case. As the petitioner did not succumb to the pressure, ASI Surinder Singh sought help of ASI Manjit Singh in that regard, as both of them had worked together and were friends.

[4]. ASI Manjit Singh registered FIR No.172 dated 27.8.2004 under section 21/61/85 of the Narcotic Drugs & Psychotropic Substances Act at Police Station City Abohar alleging, inter-alia, that "while he was on patrol duty along with another police official and they were going towards Hanumangarh bye-pass, a Hero Honda motor cycle, bearing registration No.RJ-13-3M-6016, came at a distance of about 20 steps ahead of Baba Balaji Tham; two young men were riding it, who, on seeing the police party, tried to turn back but fell down after slipping; they were over-powered by him (ASI Manjit Singh) with the help of accompanying police official; on making inquiry from the person driving the motor cycle, he disclosed his identity as Mohit Kumar s/o Ashok Kumar, while the boy who was riding pillion, disclosed his identity as Rinku son of Wakil Chand; their personal search was conducted as per procedure and consent memo was prepared; efforts to associate a private witness were made but no body was found; on conducting search of Mohit Kumar, smack wrapped in a glazed paper was recovered from the right pocket of his trouser while no contraband was recovered from the boy who was riding pillion; one gram of smack was taken as sample from the recovered smack and a separate parcel was prepared of it. On weighing the remaining smack, it came out to be 1 gram and it was kept in a plastic bag and a parcel was prepared. Both the parcels were thereafter duly sealed.....".

[5]. The petitioner, however, had an altogether different version to

to narrate. According to him, on 26.8.2004, he along with his son Mohit Kumar was present at his house when at about 7.00 p.m. some police officials came to his house in a Gypsy, bundled his son and forcibly took him with them. While the petitioner wanted to know the reason regarding whisking away of his son, he was threatened. Meanwhile, the petitioner's neighbours Sarvshri Daljit Singh, Hardip Singh and Manoj Kumar also reached. The petitioner, accompanied by the above stated neighbours, went to the SHO, City Police Station as well as Dy.S.P., Abohar. On that very day at 11 p.m. he sent complaints through fax messages to the SSP, Ferozepur as also to the Director General of Police, Punjab. It was on the next day, i.e., 27.8.2004 that the petitioner came to know that ASI Manjit Singh, who had whisked away his son, was a close friend of ASI Surinder Singh. The petitioner was not permitted to see his son Mohit Kumar in the police station, City-II by ASI Manjit Singh, who insisted that the petitioner must enter into a compromise with ASI Surinder Singh otherwise a case of recovery of two grams of smack has already been set up against his son Mohit Kumar shall be pursued. In order to save his son, the petitioner agreed to enter into a compromise. Only then, he was permitted to meet his son who disclosed to the petitioner that he was beaten up mercilessly in the presence of ASI Surinder Singh as well as his mother-in-law (Kanwaljit Kaur). The petitioner has alleged that injury marks were visible on the person of his son and blood was coming out with urine.

[6]. The petitioner's son Mohit Kumar was thereafter produced before the Ilaqa Magistrate on 28.8.2004. At that time, the petitioner's son moved an application under section 54 Cr.P.C. before the learned Sub Divisional Judicial Magistrate (SDJM), Abohar (Annexure P-4) for getting

him medically examined. In para 3 of the application, following averments were made:-

> "3. That the police has tortured the accused/applicant and has caused injuries on his person and there is further apprehension that police would do so, hence, it is necessary to get the accused medically examined."

[7]. On the said application, learned SDJM, Abohar passed an order on 28.8.2004 itself to the effect that, "Superintendent, Jails, Fazilka to do the needful under rules".

[8]. In compliance to the said order of the learned SDJM, the son of the petitioner was got medically examined on 29.8.2004 when more than one injuries were found on his person by the doctor.

[9]. Since his arrest in the above stated case, it is averred that the petitioner's son remained handcuffed and was given merciless beatings. To substantiate these allegations, the petitioner has placed on record the photographs (Annexure P4/1) in which handcuffing of the petitioner's son and the agony of physical torture undergone by him are apparently visible.

[10]. It is in this backdrop and alleging that the petitioner's son was handcuffed and physically tortured in police custody contrary to the mandate contained in the judgment of the Apex Court in **D.K. Basu**'s case (supra), this contempt petition has been filed.

[11]. It may be mentioned here that the petitioner had sent several complaints to the higher police authorities, including DGP, Punjab, on 26/27 August, 2004 (Annexure P-5). He had also sent complaints to the Punjab State Human Rights Commission (for short SHRC).

[12]. It appears from the record that the petitioner's complaints were

forwarded by the SHRC for necessary inquiry to the Home/Police Departments. This led to the marking of an inquiry by the DGP, Punjab, which was conducted by Shri Mann Singh, IPS, Addl. I.G., Crime. The aforesaid inquiry report dated 14.1.2005 which was forwarded by DGP, Punjab to the Principal Secretary, Punjab State Human Rights Commission vide his memo No.63/CR-6 dated 21.1.2005, unfolds as to how and in what manner the petitioner and his family, more particularly his son Mohit Kumar, have been victimized by ASI Surinder Singh in connivance and in collusion with his friend and associate ASI Manjit Singh. In his self-speaking detailed report, the inquiry officer concluded as under:-

> "*From the secret as well as open enquiry conducted by me so far and from the perusal of statements and case file, this fact has come to the light that the marriage of complainant Ashok Kumar's son Mohit Kumar was solemnized with Jasbir Kaur alias Goldy d/o Kanwaljit Kaur w/o Baldev Singh on 3.7.2002. Prior to this, the talks regarding marriage of Jasbir Kaur @ Goldy with Paramjit Singh @ Pamma son of ASI Surinder Singh were held. As both of them had studied together, they were in love with each other but due to certain reasons, their marriage proposal failed to materialize. Jasbir Kaur @ Goldy was seen talking to Paramjit Singh @ Pamma even after the marriage whereupon the releations between Mohit Kumar and Goldy had become strained and she had gone to her parental house. Goldy has filed a complaint case under Section 406/498-A/506/148/149 IPC in the court against her in-laws for maintenance and divorce, which is pending in the court of SDJM, abohar.*
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> *In the year 2003, ASI Surinder Singh's brother Swaran Singh, son Paramjit Singh @ Pamma, wife Kanwaljit Kaur, Baldev Singh, Swaran Kanta w/o Joginder Singh and Joginder Singh s/o Sunder had entered inside the house of complainant by breaking open the door and had given beatings to his wife Shama Rani and son Mohit Kumar. In this connection, complainant's wife Shama Rani had got*

registered a case (FIR) No.26 dated 18.1.04, under section 452/323/427/506/148/149 IPC in Police Station City Abohar. The complainant had got conducted an inquiry into the said case through I.V.C. and from the enquiry conducted, it was found that the case (FIR) which had been registered, was a genuine. The challan in the said case has been presented and is pending trial in the court. ASI Manjit Singh and ASI Surinder Singh had worked together and they are friends. Case (FIR) No.172 dated 27.8.04 under section 21/61/85 NDPS Act has been registered against complainant's son Mohit Kumar in Police Station City Abohar, which is regarding recovery of only 2 grams of smack. This case appears to be suspicious because ASI Manjit Singh, the Investigating Officer, neither joined any independent witness at the time of effecting recovery, nor called any Gazetted Officer at the spot for joining the investigation whereas as per the provisions of NDPS Act, their presence is mandatory. It proves the mala fide intention of the Investigating Officer. In case the recovery had been effected genuinely, he might have conducted proceedings as per procedure but he did not do so.

During the course of inquiry, Gurdev Singh s/o Kartar Singh, Manoj Kumar, Ved Parkash, Parveen Kumar, Hardeep Singh also got recorded their statements and produced their affidavits and it is clear from their statements that on 26.8.04 at about 7.00 p.m., one police party had come to the house of Ashok Kumar, which had taken away his son Mohit kumar and their motor cycle of Hero Honda make and on the next day, they had come to know that a false case for the recovery of smack had been registered against Mohit Kumar. This fact is corroborated from the fact that the complainant had submitted applications to the higher officers through registered post on 27.8.04. Complainant ASI Surinder Singh has been issuing threats earlier also to withdraw the cases registered against his son and brother. In this regard, the complainant had een informing the higher officers by submitting applications.

During the inquiry, this fact came to the light that as per the police theory, on conducting personal search, no contraband were recovered from the possession of other accused, namely, Rinku son of Vakil Chand, resident of Subhash Nagar, Abohar, who was sitting

on pillion of motor cycle. Even then the police in order to make this case strong, named him as accused. Whereas, a number of messages were sent to him to join the investigation but he did not join the same. This fact also creates more doubt about the genuineness of the case.

Therefore, I had come to the conclusion that ASI Surinder Singh is behind the registration of case (FIR) No.172 dated 27.8.04 u/s 21/61/85 NDPS Act Police Station City Abohar, which has been registered for the recovery of only 2 grams smack, because the wife of the complainant in this case had got a case (FIR) No.26 dated 18.1.03 under section 452/506/427/148/149 IPC registered at Police Station City Abohar against the son and brother of ASI Surinder Singh. Earlier also, ASI Surinder Singh had approached the local police to get this case cancelled but after conducting enquiry in this case by A.D.GP., I.V.C. the case was presented in the court and thereafter he adopted different tactics to get this case withdrawn but when he did not succeed, he having colluded with ASI Manjit Singh got this case registered. The mala fide intention of Manjit Singh is also proved from the fact tht he neither conducted investigation in this case per procedure, nor joined any independent witness, nor called any gazetted officer at the spot. Whereas their presence is mandatory as per the provisions of NDPS Act, but he did not do so. He himself is responsible for the same. I recommend for initiation of appropriate disciplinary action against him and a case (FIR) No.172 dated 27.8.04 for an offence under section 21/61/85 NDPS Act relating to Police Station City Abohar which has been registered contrary to the facts is also recommended to be cancelled as this case (FIR) has been got registered against the complainant jut to pressurize him so that he may effect a compromise into a case (FIR) No.26 dated 18.1.03 for an offence punishable under section 452/506/427/148/149 IPC relating to P.S. City Abohar which is lying registered against Paramjit Singh @ Pamma son of ASI Surinder Singh or to withdraw the same. If approved, while writing to S.S.P., Ferozepur and in view of the above mentioned facts, intimation may please be conveyed to the Principal Secretary, Home and Punjab State Human Rights Commission." (emphasis applied)

[13]. Upon receipt of the aforesaid inquiry report, the SHRC, vide its order dated 15.3.2005, gave an opportunity to ASI Manjit Singh to explain his position and further forwarded the same along with its order to the SSP, Ferozepur to inform regarding cancellation of the criminal case registered against the petitioner's son.

[14]. The DGP, Punjab thereafter vide his memo dated 16.5.2005 intimated the SHRC that a cancellation report in the case FIR No.172 dated 27.8.2004, u/s 21/61/85 of the NDPS Act, registered at P.S. Abohar, has been filed in the court of competent jurisdiction on 31.3.2005.

[15]. It is an admitted fact that the cancellation report was accepted. Thus, it stands finally concluded that the son of the petitioner was implicated in a totally false and fabricated case.

[16]. As regards the question, as to whether or not the petitioner's son was handcuffed and given physical torture while in police custody, this court, after issuance of show cause notice to the respondents No.1, 2 and 4 and after hearing them, passed the following order on 12.4.2005:-

> "*After hearing the counsel for the parties, I am of the view that the matter calls for an enquiry. Let the Chief Judicial Magistrate, Ferozepur conduct an enquiry into the allegations made in the petitioner.*
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> *Parties are directed to appear before the Chief Judicial Magistrate, Ferozepur on 9.5.2005.*
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> *A copy of the petition and reply filed be forwarded to the Chief Judicial Magistrate, Ferozepur who will furnish his report within six months from the date of receipt of the copy of this order.*"

[17]. Pursuant to the above said order, the learned Chief Judicial Magistrate, Ferozepur has sent his fact-finding report dated 12.12.2005, the copies whereof were also made available to Learned Counsel for the parties.

It will be apposite to reproduce the following relevant and concluding part of the findings returned by the learned Chief Judicial Magistrate in his report dated 12.12.2005:-

> "*This reference was sent by Hon'ble Punjab and Haryana High Court for making an enquiry into the allegations made by Ashok Kumar against ASI Surinder Singh, HC Harbhagwan and ASI Manjit Singh. The complainant Ashok Kumar examined EW1 Gurdev Singh, EW2 Ved Parkash Photographer, EW3 Manoj Kumar, EW4 Ashok Kumar complainant and EW5 Mohit Kumar son of Ashok Kumar. The complainant also produced on the file number of documents. The respondents examined ten witnesses namely RW1 HC Raj Kumar, RW2 Punjab singh, RW3 HV Harinderpal Singh, RW4 HC Harbhagwan (respondent), RW5 ASI Surinder Singh (respondent), RW6 HC Lal Chand, RW7 HC Munshi Ram, RW8 Constable Paramjit Singh, RW9 ASI Manjit Singh (respondent) and RW10 Dr. Resham Singh. The respondents have also produced number of documents in support of their defence.*
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> *2. A backdrop of the case is that Mohit Kumar son of Ashok Kumar is married to Goldy daughter of Kanwaljit Kaur. As per allegations of complainant, Goldy was having illicit relations with one Paramjit Singh @ Pamma son of ASI Surinder Singh (respondent). Several allegations are alleged to have been levelled against Goldy and Pamma. As per statemnt of Ashok Kumar, Mohit caught Goldy and Pamma in a compromising position in their house. Similar statement was made by Mohit kumar. On 17.1.2003 Kanwaljit Kaur mother of Goldy, Paramjit @ Pamma and Swaran Kanta allegedly inflicted injuries on the person of Shamma wife of Ashok Kumar and FIR No.26 dated 18.1.2003 was registered against Pamma as well as Kanwaljit Kaur mother of Goldy and they are facing trial before SDJM, Abohar. As per allegations of complainant ASI Surinder Singh put pressure upon Ashok Kumar to compromise in FIR No.26 dated 18.1.2003 wherein his son was facing trial. Ashok Kumar had been sending complaints to various higher authorities in this regard including D.I.G., Ferozepur Range as well as Punjab Human Rights Commission and DGP. As per*

evidence on the file two gram smack is alleged to have been recovered from Mohit son of Ashok Kumar on 27.8.2004 at 10.15 AM. As per version of complainant Mohit Kumar was kidnapped on 26.8.2004. Mohit was produced before SDJM, Abohar for remand. Mohit was produced for medical examination on 28.8.2004 before Dr. Resham Singh who examined Mohit at 1.20 PM on 28.8.2004 and found that there was no external injury on his body. When Mohit Kumar was arrested along with one Rinku son of Wakil Chand, Rinku was also examined by Dr. Resham Singh on 28.8.2004 and no external injury on his body was found. Mohit Kumar was produed in the court in handcuffs as has been depicted in two photostat copies of photographs. No permission was sought by the police to handcuff Mohit Kumar at the time of his presentation before the court.

3. Mohit Kumar was again examined by Dr. H.R. Godara on 29.8.2004 at 12.10 PM. He was brought by Constable Ved Parkash No.335 and HC Sewa Singh No.1310 of Sub Jail, Fazilka. The medical officer found following five injuries on the person of Mohit Kumar:-

1. *Abrasion C browning scab formation measuring 1.3 cm x 1 cm on the back of right hand on its outer half. Advised X-ray.*
2. *Abrasion C browning cock scab formation on the hand of left elbow measuring 5 cm x 1 cm. Advised X-ray.*
3. *C/O pain left knee joint. Advised X-ray.*
4. *C/O bleeding per rectum. No external injury mark. Injury was kept under observation for surgical specialist opinion.*
5. *A bluish contusion measuring 5 cm on the left iliac region.*

It establishes that Mohit Kumar was tortured during police custody. As far as FIR No.172 dated 27.8.2004 under NDPS Act is concerned, the matter is subjudice before learned Additional Sessions Judge, Ferozepur. However, as per documents on the file it transpires that police has already mvoed for cancellation of FIR No.172 dated 27.8.2004, P.S. City Abohar against accused Mohit kumar. It also reveals that departmental action is also being taken against ASI Manjit Singh." (emphasis applied)

[18]. In all fairness, a brief reference to the defence plea taken by respondents No.1 and 4, namely, ASIs Surinder Singh and Manjit Singh may also be noticed. ASI Surinder Singh, in his affidavit dated 10.1.2005, has attempted to show a total ignorance regarding registration of FIR No.172 dated 27.8.2004 under the NDPS Act against the petitioner's son Mohit Kumar. According to him, he had come to the High Court on that day in relation to a pending criminal case and had left Abohar on 26.8.2004 itself, therefore, he had nothing to do with the registration of the said case. So far as the allegation of causing torture upon the petitioner and his family for the withdrawal of criminal case FIR No.26 dated 18.1.2003 is concerned, he has denied those allegations also.

[19]. ASI Manjit Singh, in his affidavit dated 9/11 January, 2005 has fully justified the registration of FIR No.172 dated 27.8.2004 as, according to him, smack was recovered from Mohit Kumar. As regard to the physical torture of Mohit Kumar in police custody, ASI Manjit Singh has averred that even before producing the said accused in the court of Ilaqa Magistrate on 28.8.2004, he was got medically examined and no external injury was reported by the doctor. According to him, the injuries have surfaced in the medical examination conducted on 29.8.2004 and before that Mohit Kumar had already been sent in judicial lock-up by the learned SDJM on 28.8.2004, therefore, the injuries, if any, must have been suffered by him while he was lodged in the jail and not while he was in the police custody.

[20]. In the light of firm conclusions drawn by Addl. I.G., Crime, Punjab in his report dated 14.1.2005, as well as in view of the categoric findings returned by the learned Chief Judicial Magistrate, Ferozepur in his inquiry report dated 12.12.2005, the relevant parts of which have been

reproduced above, there can be no other conclusion but to hold that the defence pleas taken by respondents No.1 and 4, i.e. ASIs Surinder Singh and Manjit Singh, are totally afterthought, false and contrary to the facts established on record. There is neither even a whisper by both, the above said respondents, either against the inquiry report by the Addl. I.G., Crime nor have they filed any objections against the report of the learned Chief Judicial Magistrate. Above all, the inquiry report of the learned Chief Judicial Magistrate is based upon correct appreciation of evidence led by both the parties and I am inclined to accept the conclusions drawn by him. The defence pleas taken by respondents no.1 and 4, are accordingly rejected.

[21]. In order to minimize, if not prevent, the menace of custodial violence and for award of compensation to the victims of such custodial violence, their Lordships of the Supreme Court have issued several mandatory directions in **D.K. Basu**'s case (supra). In para 36 of the report, the Apex Court has laid down various requirements which are to be mandatorily followed in all cases of arrest or detention. Some of the requirements which are relevant to the facts and circumstances of the present case, are as follows:-

> "(i) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the interest and its copy provided to the arrestee.
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> (ii) The arrestee should be subjected to medical examination

by a trained doctor every 48 hours of his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(iii) Failure to comply with the requirements herein above mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

(iv) he requirements, referred to above, flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier.

(v) These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the Courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee."

[22]. For the award of monetary or penury compensation to the victims of custodial interrogation and/or kith and kin of those who die in custody on account of torture, the Apex Court further held as follows:-

"54. Thus, to sum up, it is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the

established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong-doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available tot he victim or the heirs of the deceased victim with respect to the same matter for the tortuous act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf...."

[23]. As an outcome of the administrative and the judicial inquiries conducted in this case, the relevant parts of which have already been reproduced in *extenso*, the following conclusions clearly emerge:-

(i) the petitioner's son (Mohit kumar) was falsely implicated in the case FIR No.172 dated 27.8.2004, P.S. City Abohar

under the NDPS Act; the fact that subsequently a cancellation report was filed and accepted by the court of competent jurisdiction confirms it;

(ii) Mohit Kumar was actually picked up by the police team headed by ASI Manjit Singh on 26.8.2004 at about 7 p.m. which is clearly inferrable from the fact that his father (the petitioner) sent fax messages to the higher police authorities to this effect on that very day at about 11 p.m.; the representations sent by him on 27.8.2004 also substantiate this allegation;

(iii) Mohit Kumar was kept in illegal custody and in order to give legitimacy to his act of vindictive abuse of power, ASI Manjit Singh slapped a false and concocted case upon him on the next day, i.e. 27.8.2004 when FIR No.172 was registered under the NDPS Act at 10.15 a.m.;

(iv) while in custody, Mohit Kumar was kept handcuffed without obtaining any permission of the court. From the facts and record, said Mohit Kumar does not appear to be such a dreaded criminal that his handcuffing could be otherwise justified;

(v) Mohit Kumar, while in custody of the police team led by ASI Manjit Singh, was subjected to third degree methods of physical torture which resulted into multiple injuries on his person, as detected by the doctor during medical examination, which, it appears, was deliberately delayed and got conducted on 29.8.2004 only;

(vi) the allegation of the petitioner that when he met Mohit Kumar while in police custody, he was screaming with pain and/or blood was oozing out of his urine, inspires confidence and does not appear to be an exaggerated version;

(vii) an officer of the rank of Additional I.G., Crime has categorically concluded that ASI Manjit Singh is a dear friend of ASI Surinder Singh and both of them have worked together. There is nothing on record to disbelieve this finding of fact;

(viii) undoubtedly, ASI Surinder Singh had an axe to grind against the petitioner and his family; in the FIR No.26 dated 18.1.2003 under section 323/427/452/506/148/149 IPC in the Police Station City Abohar, son of ASI Surinder Singh, namely, Paramjit Singh @ Pamma, as well as one or two brothers of ASI Surinder Singh are named as accused; the FIR has been got registered on the statement of wife of the petitioner in which it is alleged that the son of ASI Surinder Singh and his associates criminally trespassed upon the petitioner's house and assaulted his wife and son, namely, Mohit Kumar;

(ix) if the allegations are true, Jasbir Kaur @ Goldy, with whom the petitioner's son got married, had illicit relations with Paramjit Singh @ Pamma, son of ASI Surinder Singh, and both of them were caught red-handed in a compromising position by Mohit kumar in their house;

(x) ASI Surinder Singh has been using all kinds of pressure

tactics upon the petitioner and his family for a compromise in the case FIR No.26 dated 18.1.2003 under section 323/427/452/506/148/149 IPC in the Police Station City Abohar; and

(xi) thus, there was a clear motive behind implication of petitioner's son, Mohit Kumar, in a false case under the NDPS Act so that the same could be used for the purpose of arm-twisting against the petitioner and his family.

[24]. As a necessary corollary to the aforesaid conclusions, it stands established that both ASI Manjit Singh and ASI Surinder Singh have brazenly violated more than one directions issued by their Lordships of the Supreme Court in **D.K. Basu**'s case (supra), the relevant parts of which have been extracted in para No.[24] of this order. Both ASIs Manjit Singh and Surinder Singh are, thus, guilty of committing contempt of the Hon'ble Supreme Court for which this petition is maintainable in view of direction No. (XII) issued by the Apex Court in **D.K. Basu**'s case (supra). Both of them are accordingly held guilty of committing the contempt of court.

[25]. The question then arises as to, in the facts and circumstances of this case, what sentence should be awarded to the contemners, namely, ASIs Manjit Singh and Surinder Singh. Though, having regard to the fact that both the police officials have not only violated the mandatory directions issued by the highest Court of the land and have, thus, played with the protection, the life and dignity of citizens of this country, which is guaranteed under Articles 21 and 22(1) of the Constitution and that too by registering a case which was false to their knowledge and was designed by them to achieve an oblique motive, it appears to be a fit case to award

maximum sentence to them as prescribed in section 12 of the Contempt of Courts Act, 1971. However, learned counsel representing them has tendered their unconditional apology and pleads for mercy. He submits that the sentence of 'civil imprisonment', if awarded by this court, might result into removal of the contemners from service.

[26]. While equitable considerations, sympathy or compassion is alien for determining a punishment proportionate to the gravity of offence/misconduct, however, in a given case, alternative directions like imposition of exemplary costs may have more deterrent effect than the "civil imprisonment". In addition, the victim's plight requires an equal consideration by the court. In the case in hand, the petitioner did knock at several possible doors in order to secure justice for himself and his family. He also approached the higher police authorities and the State Human Rights Commission before invoking contempt jurisdiction of this court. As the records of this case speak for themselves, the higher police authorities have exhibited dispassionate and impartial performance of duty. They did not attempt to protect their erring subordinates.

[27]. In this view of the matter and keeping in view the fact that the petitioner and his family deserve to be suitably compensated, but at the same time, the higher police authorities of the State Govt. having acted upon promptly, it may not be desirable to hold the State also as vicariously liable for the acts of the two contemners who are subordinate police officials, I am of the considered view that the ends of justice shall be fully met if both the contemners, instead of being subjected to undergo 'civil imprisonment', are directed to pay exemplary costs as compensation to the petitioner and his family.

[28]. Consequently, and for the reasons afore-stated, I direct both the contemners, namely, ASIs Manjit Singh and Surinder Singh to pay costs of Rs.50,000/- each, i.e. a total sum of Rs.1 lac within a period of two months from today. Out of the total sum of Rs.1 lac, while 50% , i.e. Rs.50,000/- shall be paid to the petitioner, the remaining sum of Rs.50,000/-shall be paid to Mohit Kumar, son of the petitioner. In the event of failure of the contemners to pay costs within the stipulated period, the Director General of Police, Punjab is directed to make payment of the costs amount to the petitioner and his son and deduct the same from the monthly salary, gratuity, leave encashment and/or any other retiral benefits of the respondent-contemners, if the need arises. However, in that event, both the contemners shall also be liable to pay simple interest @ 9% p.a. on the amount of costs till the same is fully realized from them by the State Govt. If the contemners pay the costs to the petitioner and his son within the stipulated period, they shall produce a receipt to this effect in the office of Director General of Police, Punjab so that the necessity for the latter authority to make payment to the petitioner and his son and/or to recover the same from the contemners, as directed above, does not arise.

[29]. Let a copy of this order be supplied to Shri G.S. Cheema, Learned Sr. DAG, Punjab, for information and necessary compliance.

October 09, 2006. [**Surya Kant**]
kadyan **Judge**